

1 CENTER FOR DISABILITY ACCESS  
2 Amanda Seabock, Esq., SBN 289900  
3 Prathima Price, Esq., SBN 321378  
4 Dennis Price, Esq., SBN 279082  
5 Mail: 8033 Linda Vista Road, Suite 200  
6 San Diego, CA 92111  
7 (858) 375-7385; (888) 422-5191 fax  
8 [amandas@potterhandy.com](mailto:amandas@potterhandy.com)

9  
10 Attorneys for Plaintiff

11  
12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15

16  
17 **Scott Johnson**

18 Plaintiff,

19 v.

20 **Less Properties LLC**, a California  
21 Limited Liability Company;  
22 **Samasathy Ouk**

23 Defendants.

24 **Case No.**

25 **Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

26 Plaintiff Scott Johnson complains of Less Properties LLC, a California  
27 Limited Liability Company; Samasathy Ouk; and alleges as follows:  
28

29  
30 **PARTIES:**

31 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a  
32 level C-5 quadriplegic. He cannot walk and also has significant manual  
33 dexterity impairments. He uses a wheelchair for mobility and has a specially  
34 equipped van.

35 2. Defendant Less Properties LLC owned the real property located at or  
36 about 4478 Pearl Ave, San Jose, California, between December 2020 and  
37 February 2021.  
38

1       3. Defendant Less Properties LLC owns the real property located at or  
2 about 4478 Pearl Ave, San Jose, California, currently.

3       4. Defendant Samasathy Ouk owned Fresh Donuts located at or about  
4 4478 Pearl Ave, San Jose, California, between December 2020 and February  
5 2021.

6       5. Defendant Samasathy Ouk owns Fresh Donuts located at or about 4478  
7 Pearl Ave, San Jose, California, currently.

8       6. Plaintiff does not know the true names of Defendants, their business  
9 capacities, their ownership connection to the property and business, or their  
10 relative responsibilities in causing the access violations herein complained of,  
11 and alleges a joint venture and common enterprise by all such Defendants.  
12 Plaintiff is informed and believes that each of the Defendants herein is  
13 responsible in some capacity for the events herein alleged, or is a necessary  
14 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
15 the true names, capacities, connections, and responsibilities of the Defendants  
16 are ascertained.

17  
18       **JURISDICTION & VENUE:**

19       7. The Court has subject matter jurisdiction over the action pursuant to 28  
20 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
21 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

22       8. Pursuant to supplemental jurisdiction, an attendant and related cause  
23 of action, arising from the same nucleus of operative facts and arising out of  
24 the same transactions, is also brought under California's Unruh Civil Rights  
25 Act, which act expressly incorporates the Americans with Disabilities Act.

26       9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
27 founded on the fact that the real property which is the subject of this action is  
28 located in this district and that Plaintiff's cause of action arose in this district.

1                   **FACTUAL ALLEGATIONS:**

2                   10. Plaintiff went to Fresh Donuts in December 2020 with the intention to  
3 avail himself of its goods or services motivated in part to determine if the  
4 defendants comply with the disability access laws. Not only did Plaintiff  
5 personally encounter the unlawful barriers in December 2020, but he wanted  
6 to return and patronize the business several times but was specifically deterred  
7 due to his actual personal knowledge of the barriers gleaned from his  
8 encounter with them.

9                   11. Fresh Donuts is a facility open to the public, a place of public  
10 accommodation, and a business establishment.

11                  12. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
12 to provide wheelchair accessible dining surfaces in conformance with the ADA  
13 Standards as it relates to wheelchair users like the plaintiff.

14                  13. Fresh Donuts provides dining surfaces to its customers but fails to  
15 provide wheelchair accessible dining surfaces.

16                  14. One problem that plaintiff encountered is the lack of sufficient knee or  
17 toe clearance under the outside dining surfaces for wheelchair users.

18                  15. Plaintiff believes that there are other features of the dining surfaces that  
19 likely fail to comply with the ADA Standards and seeks to have fully compliant  
20 dining surfaces for wheelchair users.

21                  16. On information and belief, the defendants currently fail to provide  
22 wheelchair accessible dining surfaces.

23                  17. Additionally, on the date of the plaintiff's visit, the defendants failed to  
24 provide wheelchair accessible door hardware in conformance with the ADA  
25 Standards as it relates to wheelchair users like the plaintiff.

26                  18. Fresh Donuts provides door hardware to its customers but fails to  
27 provide any wheelchair accessible door hardware.

28                  19. A problem that plaintiff encountered is that the entrance door hardware

1 had pull bar with panel style handles that required tight grasping to operate.

2 20. Plaintiff believes that there are other features of the door hardware that  
3 likely fail to comply with the ADA Standards and seeks to have fully compliant  
4 door hardware for wheelchair users.

5 21. On information and belief, the defendants currently fail to provide  
6 wheelchair accessible door hardware.

7 22. These barriers relate to and impact the plaintiff's disability. Plaintiff  
8 personally encountered these barriers.

9 23. Even though the plaintiff did not encounter the barrier, the sales counter  
10 at Fresh Donuts is not accessible. There is no clear floor space in front of the  
11 sales counter because the defendants place a bench in front of it.

12 24. As a wheelchair user, the plaintiff benefits from and is entitled to use  
13 wheelchair accessible facilities. By failing to provide accessible facilities, the  
14 defendants denied the plaintiff full and equal access.

15 25. The failure to provide accessible facilities created difficulty and  
16 discomfort for the Plaintiff.

17 26. The defendants have failed to maintain in working and useable  
18 conditions those features required to provide ready access to persons with  
19 disabilities.

20 27. The barriers identified above are easily removed without much  
21 difficulty or expense. They are the types of barriers identified by the  
22 Department of Justice as presumably readily achievable to remove and, in fact,  
23 these barriers are readily achievable to remove. Moreover, there are numerous  
24 alternative accommodations that could be made to provide a greater level of  
25 access if complete removal were not achievable.

26 28. Plaintiff will return to Fresh Donuts to avail himself of its goods or  
27 services and to determine compliance with the disability access laws once it is  
28 represented to him that Fresh Donuts and its facilities are accessible. Plaintiff

1 is currently deterred from doing so because of his knowledge of the existing  
 2 barriers and his uncertainty about the existence of yet other barriers on the  
 3 site. If the barriers are not removed, the plaintiff will face unlawful and  
 4 discriminatory barriers again.

5 29. Given the obvious and blatant nature of the barriers and violations  
 6 alleged herein, the plaintiff alleges, on information and belief, that there are  
 7 other violations and barriers on the site that relate to his disability. Plaintiff will  
 8 amend the complaint, to provide proper notice regarding the scope of this  
 9 lawsuit, once he conducts a site inspection. However, please be on notice that  
 10 the plaintiff seeks to have all barriers related to his disability remedied. See  
 11 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 12 encounters one barrier at a site, he can sue to have all barriers that relate to his  
 13 disability removed regardless of whether he personally encountered them).

14

**15 I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
 16 WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all  
 17 Defendants.) (42 U.S.C. section 12101, et seq.)**

18 30. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 19 again herein, the allegations contained in all prior paragraphs of this  
 20 complaint.

21 31. Under the ADA, it is an act of discrimination to fail to ensure that the  
 22 privileges, advantages, accommodations, facilities, goods and services of any  
 23 place of public accommodation is offered on a full and equal basis by anyone  
 24 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 25 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 26       a. A failure to make reasonable modifications in policies, practices,  
 27           or procedures, when such modifications are necessary to afford  
 28           goods, services, facilities, privileges, advantages, or

1 accommodations to individuals with disabilities, unless the  
2 accommodation would work a fundamental alteration of those  
3 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

- 4 b. A failure to remove architectural barriers where such removal is  
5 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
6 defined by reference to the ADA Standards.  
7 c. A failure to make alterations in such a manner that, to the  
8 maximum extent feasible, the altered portions of the facility are  
9 readily accessible to and usable by individuals with disabilities,  
10 including individuals who use wheelchairs or to ensure that, to the  
11 maximum extent feasible, the path of travel to the altered area and  
12 the bathrooms, telephones, and drinking fountains serving the  
13 altered area, are readily accessible to and usable by individuals  
14 with disabilities. 42 U.S.C. § 12183(a)(2).

15 32. When a business provides facilities such as dining surfaces, it must  
16 provide accessible dining surfaces.

17 33. Here, accessible dining surfaces have not been provided in  
18 conformance with the ADA Standards.

19 34. When a business provides facilities such as door hardware, it must  
20 provide accessible door hardware.

21 35. Here, accessible door hardware has not been provided in conformance  
22 with the ADA Standards.

23 36. When a business provides facilities such as sales counters, it must  
24 provide accessible sales counters.

25 37. Here, accessible sales counters have not been provided in conformance  
26 with the ADA Standards.

27 38. The Safe Harbor provisions of the 2010 Standards are not applicable  
28 here because the conditions challenged in this lawsuit do not comply with the

1 1991 Standards.

2       39. A public accommodation must maintain in operable working condition  
3 those features of its facilities and equipment that are required to be readily  
4 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

5       40. Here, the failure to ensure that the accessible facilities were available  
6 and ready to be used by the plaintiff is a violation of the law.

7

**8 II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL  
9 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
10 Code § 51-53.)**

11       41. Plaintiff repleads and incorporates by reference, as if fully set forth  
12 again herein, the allegations contained in all prior paragraphs of this  
13 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
14 that persons with disabilities are entitled to full and equal accommodations,  
15 advantages, facilities, privileges, or services in all business establishment of  
16 every kind whatsoever within the jurisdiction of the State of California. Cal.  
17 Civ. Code §51(b).

18       42. The Unruh Act provides that a violation of the ADA is a violation of the  
19 Unruh Act. Cal. Civ. Code, § 51(f).

20       43. Defendants’ acts and omissions, as herein alleged, have violated the  
21 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
22 rights to full and equal use of the accommodations, advantages, facilities,  
23 privileges, or services offered.

24       44. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
25 discomfort or embarrassment for the plaintiff, the defendants are also each  
26 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
27 (c).)

28       45. Although the plaintiff encountered frustration and difficulty by facing

1 discriminatory barriers, even manifesting itself with minor and fleeting  
2 physical symptoms, the plaintiff does not value this very modest physical  
3 personal injury greater than the amount of the statutory damages.

4

5

**PRAYER:**

6

7

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

8

9

10

11

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

12

13

14

2. For equitable nominal damages for violation of the ADA. See *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021) and any other equitable relief the Court sees fit to grant.

15

16

3. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

17

18

4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

19

Dated: April 21, 2021

CENTER FOR DISABILITY ACCESS

20

21

By: 

22

23

Amanda Seabock, Esq.  
Attorney for plaintiff

24

25

26

27

28